Minutes of the 88th meeting of the Board of the EHRC

11 March 2020
Fleetbank House, 2-6 Salisbury Square, London, EC4Y 8JX

Attending:
Commissioners
David Isaac, Chair (Absent for BBC investigation in pre meeting)
Suzanne Baxter (Joined via VC)
Pavita Cooper (Joined via phone)
Alasdair Henderson (Chair for BBC investigation in pre meeting)
Susan Johnson
Helen Mahy
Lesley Sawers
Rebecca Hilsenrath, Chief Executive Officer (Absent for Labour Party investigation in pre meeting)

Officers
Dean Button, Director – (Item 11 only)
Erica Boardman, Senior Principal - Communications (pre-meeting only)
Ben Coates, Senior Principal - Performance and Effectiveness Unit (Item 11 only)
Malcolm Cornberg, Executive Director - Corporate Services (Item 11 only)
Melanie Field, Executive Director - Wales and Strategy and Policy (Absent for Labour Party investigation in pre meeting)
Karen Grayson, Principal – Institutional Strategy (Item 12.2 only)
Jenine Gill, Principal – Legal (pre-meeting only)
Joanna Gregson, Senior Principle – Legal (Item 2 only)
Sarah Maclean, Director - Strategy and Governance (Absent for Labour Party investigation in pre meeting)
Tessa Griffiths, Director - Strategy and Governance
Stephen Lodge, Senior Principle – Legal (pre-meeting only)
Callum MacInnes, Principal – Corporate Governance
Alasdair MacDonald, Director - Policy (Item 12.1 only)
Alastair Pringle, Executive Director - Scotland and Corporate Delivery
Sarah Whelan, Senior Associate – Corporate Governance

Guests
Sarah Hannett - Matrix Law (Pre-meeting only)
Henrietta Hill QC – Matrix Law (Pre-meeting only)
Alison Parken, Interim Chair - EHRC Wales Committee
Charles Ramsden - Government Equalities Office (Attended part of the meeting)

1. Chair's introduction

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1.1 David Isaac welcomed attendees. Alison Parken continued to attend as Interim Chair of the Commission's Wales Committee, pending the appointment of a Wales Commissioner.

1.2 Prior to the meeting the Board received updates on the two ongoing investigations, accusations of islamophobia within the Conservative Party and the next Spending Review. In discussing these updates the Board agreed to feedback in any comments they had following the meeting; seek clarification as to the approach taken in previous investigations; give consideration to other ongoing external investigations where required; and to meet prior to the next formal Board for a further discussion on the spending review.

2. Apologies for absence

Apologies had been received from Caroline Waters and Mark McLane.

3. Declarations of interest

Alasdair Henderson declared a potential conflict of interest with regards to item 8.1 b) below on transgender guidance. No other declarations were made additional to those already registered.

4. Minutes of the last meeting

The minutes of the 87th Board meeting of 22 January 2020 (EHRC 88.05) were agreed as an accurate record.

5. Actions arising

5.1. The Board reviewed the log of actions arising from the previous Board meetings (EHRC 88.06). The Board noted the following updates:

a) 87/6.2 (b) - Future of the Human Rights Act: Officers to develop more detailed proposals for the Board's consideration. A paper will come to a forthcoming meeting.

b) 87/6.2 (d) - Plans for an England strategy: Officers to develop further in the light of Board members' feedback and in discussion with Caroline Waters as Lead Commissioner. A revised plan will come to a forthcoming meeting

c) 87/6.3 - Spending Review: Officers to develop an external narrative; progress the internal plan on the basis of settlement scenarios; and work with stakeholders, including the Cabinet Office. Covered in the pre-meeting discussion.

d) 87/8.1(f) - EASS helpline: Officers to provide an update at a future Board meeting. The Board requested an update on whether an in house helpline would have implications on office space and resources. Melanie Field advised that proposals are that the Commission will work with a partner,

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who would take ownership of the onsite Helpline. A paper will come to a forthcoming meeting.

e) 86/6.7 – Assisted Dying (outstanding action from 86th meeting of 14 November 2019). Take forward recommendations on consulting DAC, and wider positioning as suggested by DAC. The Board requested an update. Melanie Field advised that this would be circulated to DAC and the Board in due course. **Action: Melanie Field.**

f) 86/7.1(g) – Gender pay gaps (action from 86th meeting of 14 November 2019) To provide a between-meeting update on Progress, including an update on how the Commission was linking this with Working Forward and clarifying understanding of the various metrics and definitions. The Board requested an update. Rebecca Hilsenrath met with the Government Equalities Office in February 2020 in relation to the disability pay gap. This will be kept under review.

5.2 The Board was content that remaining actions were complete, progressing satisfactorily, or to be addressed under later agenda items.

6. Commissioner updates

6.1 Wales Committee appointments.

David Isaac spoke to paper EHRC 88.07 and the Board agreed to the reappointment of Alison Parken to the Wales Committee for a further and final three-year period.

At the recommendation of Alison Parken, the Board further agreed:

a) The reappointment of Geraint Hopkins for a further and final three-year period.
b) The reappointments of Rocio Cifuentes and Martyn Jones for a further and final two-year period.
c) The appointments of Grace Quantock and Bethan Thomas for a period of three years.

6.2.1 IBF CWG update.

6.2.2 Lesley Sawers spoke to paper EHRC 88.08. An update was provided on the Commissioner Working Group, which has been established to provide oversight and direction to the IBF programme. In advance of the Board, the plan had already been discussed with the Scotland and Wales Committees.

6.2.3 The Board were asked to agree and endorse:

a) The Terms of Reference for the Commissioner Working Group (EHRC 88.08 annex A) and
b) The high-level plan for delivery of the IBF programme.

6.2.4 The Board queried why there was felt to be a high likelihood of the IBF, ISF and IWF reports being delayed. The CEO advised that this had been the case

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in the past and that this was related to delays in the reports being laid in Parliament.

6.2.5 The Board noted that the statutory requirement was for the report to be published every five years, however, the Commission's current practice was to align publication with strategic planning and, as such, a report is produced every three years. The interim Chair of the Wales Committee advised that these reports are key to influencing policies in Wales and, as such, it would be helpful for the Commission to set out clearly the areas of focus at the earliest opportunity.

6.2.1 The Board were informed that the approach will be to look at the data and outcomes against the measurement framework used for IBF 2018, then undertake 'deep dives' to look further into specific areas in more detail and provide specific evidence based recommendations for policy makers. There will be an alignment between the deep dives and the Commission's priority aims.

6.2.2 The Board agreed to IBF CWG's terms of reference and the proposed high-level delivery plan.

6.3 **Updates by exception from Committee/CWG/Lead Commissioners**

6.3.1 The Chair of ARAC advised the Board that ARAC were working on assurance mapping. The Board noted that this linked to year-end assurance statements and that the assurance map would come annually to the Board.

6.3.2 The Board were informed that improved governance structures had been put in place to link work across the three nations and that this would be valuable in developing IBF, ISF and IWF. The CEO was now attending the Wales and Scotland Committee meetings more often and 'three nations' meetings will now take place a week prior to Board meetings and be used to inform Board discussions.

6.3.3. Attendees were advised that the Disability Advisory Committee (DAC) will be inviting the UK Government's Disability Unit to their next meeting.

7. Executive Updates

7.1 Chief Executive Report:

Rebecca Hilsenrath, presented the CEO's report on strategic issues and performance (EHRC 88.09). She highlighted the following issues:

a) **Coronavirus**:

I. The Commission was evaluating Government advice as and when it is received and continuing to operate business as usual where possible. The People, Facilities and Communications teams were also monitoring all the buildings in which we have offices to be aware of specific risks. A health and safety and a business impact risk assessment had both been carried out. It

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was noted that the highest risk work streams were the two major investigations, publication of the accounts, recruitment and ICT. Whilst the Commission was felt to be well placed in terms of ICT, given many employees work from home regularly, it was noted that there had not previously been a situation where all employees were working from home at the same time.

II. The decision had been taken to cancel the Commonwealth Forum meeting due to the coronavirus. This had implications on the decision of assigning a permanent secretariat for the Forum. This meeting had been timed to align with the GANHRI annual meeting which was later cancelled. It was noted that attendance at other international events due to take place in June (including CHOGM) would need to be considered closer to the date. The Commission needed to ensure it was agile and consider its key role as Chair of the Forum.

III. The CEO was asked to review the contingency plans to ensure that they took into account the impact of employees with specific circumstances (such as staff with caring responsibilities; or those impacted by the closure of schools) being off work. **Action: Rebecca Hilsenrath and Joe Corcos**

b) **Leadership and the Commission's improvement journey:**

I. The CEO had recently attended a leadership conference, which was well attended at a high level. . There had been useful learning from this event around: the need for a 'bureaucratic revolution'; safe spaces for innovation and/or mistakes, and creating a culture of continuous improvement. EG would have the opportunity to discuss at the forthcoming EG development day.

II. Attendees agreed that undertaking a lessons learnt analysis from the on-going legal investigations was vital. Members noted the need to enable the learning from these exercises to permeate the organisation and interact with risk management. Commissioners were asked to indicate whether they wished to be involved in the lessons learnt exercise. **Action: Commissioners**

7.2 Finance Report:

6.2.3 The Board reviewed the forecast outturn, year to date performance, and forecast financial risks at Period 10, as set out in the Finance Report (EHRC 88.10). It was noted that there was a forecast overspend of £59k. This represented a decrease of £38k from the £97k forecast over spend reported at Period 8.

6.2.4 Malcolm Cornberg and Dean Button commented that they remained confident that the Commission will deliver a small underspend against the 19/20 budget. Attendees were advised that there had been a significant improvement in the forecasting process across the Commission, as a result of increased engagement and more robust processes implemented within the Legal Directorate. It was noted that staff retention and recruitment had an impact on forecast expenditure in the later part of 2019/20, but this risk has reduced significantly, as there are now less recruitment activities in the pipeline for 2019/20.

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6.2.5 The Board asked what impact the “dialling up activities” have had. Malcolm Cornberg advised that this could only be assessed once the exercise was complete and a retrospective assessment undertaken. Malcolm offered to circulate in advance of the next Board a list of “dialling up measures” which had been approved by the Executive Group and had been delivered by the financial year end. **Action Malcolm Cornberg**

6.2.6 **Strategic Risk Register (SRR):**

7.3.1 Ben Coates presented the Strategic Risk Register (SRR) and review of risk appetite (EHRC 88.11). The Board were asked to review and agree the new Strategic Risk Register format which had been endorsed by ARAC, and to review and agree the recommended risk appetite scores.

7.3.2 It was agreed that the risk register now better reflected strategic risks, was more accessible and embedded the risk appetite more clearly. A number of recommendations for further improvement were made, including: adding in climate change to risk 5; ARAC to consider the appropriate level of detail required to be captured in the SRR; the risk around loss of skills / experience to be put back into the SRR and consideration of how top operational risks e.g. coronavirus are highlighted in the SRR. SRR to be reviewed and a paper provided to ARAC on June 11 and fed to 90th Board on 02 July. **Action: Ben Coates**

7.3.3 The Board queried the timeline on succession planning under risk 4 on the register. It was agreed that although this risk had reduced due to senior posts being in post by June, another element has been added to this risk – looking at long term succession planning. This would be discussed further at HRRC on 05 May: HRRC and ARAC to consider, discuss and feedback to board. **Action: Ben Coates**

7.3.4 The Board approved the SRR, subject to the above actions and granular detail added via ARAC.

6.2.7 **Board effectiveness review:**

7.4.1 Melanie Field spoke to paper Board effectiveness Review (EHRC 88.12) and sought Board agreement to the approach outlined in the paper. The Board were reminded that Campbell Tickell had provided a tool which could be used to review current Board effectiveness and to compare this to the results of the previous review. The proposed approach (point 4 EHRC 88.12 paper) for a light touch review through a questionnaire via a ‘smart survey’ tool for the Board to access was agreed.

7.4.2 Following the Board’s request at the January Board meeting, a focused piece of work aimed at strengthening the relationship and ways of working between the Board and the Executive was discussed. This was to be a distinct piece of work led jointly by Caroline Waters, as Deputy Chair, and Melanie Field, as the ED responsible for Governance. The paper (point 5.2 EHRC 88.12 paper)

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proposes that this work will be undertaken in parallel to the questionnaire piece. The Board, however, felt that these should be two distinct pieces of work, with the questionnaire feeding into the improving relationships piece. Melanie Field was asked to discuss this further with Caroline Waters and to report back at the May Board meeting. **Action: Melanie Field**

8. Strategic Items

8.1 **Key Decisions on 2020-21 Business Plan paper** (EHRC 88.13)

The Board were presented with an update on the political landscape post the general election and were asked for their views on some detailed questions relating to the delivery of the previously agreed business plan for 2020-21.

a) Department of Work and Pensions inquiry:

I. Laura Lucking spoke to paper EHRC 88.13 annex A, recommending that the Commission pursue an inquiry to review the policies and practices of DWP and its contractors in relation to the Work Capability Assessment (WCA). The focus would be on the initial decision making process, carried out by Maximus an external contractor, and not the appeals phase.

II. Engagement with key stakeholders and a review of evidence suggested that the inquiry could result in specific and deliverable recommendations to ensure non-discrimination in the delivery of the WCA, addressing long-standing concerns from stakeholders. This piece of work has already been considered within the Business plan. Attendees discussed how the focus would be on indirect discrimination but that it could also address the Public Sector Equality Duty (PSED).

III. It was agreed any knock on effect with devolved administrations needed to be considered, with a request for the Scotland Committee to have sight of the Terms of reference and the methodology and that they are involved in this work.

IV. Clarity was sought around whether focus needed to alter when undertaking an inquiry into an external contractor. Suzanne Baxter offered her expertise in this area.

V. The Board agreed the Commission pursuing the inquiry subject to the above considerations and resource implications

b) Transgender guidance:

I. Melanie Field referred to the Commission's guidance for transgender pupils, which outlines the Equality Act requirements for schools in England, relating to the education, benefits, facilities and services provided to pupils with the protected characteristic of gender reassignment.

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II. It was noted that the Scottish Government were consulting on a Gender Recognition Reform Bill and had prepared their own guidance which complements the Commission's. They have asked the Commission to plan publication of our guidance to run alongside theirs.

III. The UK Government, however, had indicated that they would like publication to be delayed in order that it could be timed to align with other work that they were taking forward in this space.

IV. The Scotland Commissioner noted that she had built an effective relationship with Scottish ministers and that the Deputy First Minister has asked for the Commission's publication plans. She emphasised that not to publish would cause significant issues in Scotland and that it was the strong recommendation of the Scotland Committee that it should be published. The Interim Chair of the Wales Committee advised that engagement with the Children's Commissioner in Wales had taken place, and plans were in place to have further conversations with the Welsh Education Minister to align this guidance with recently published work on sexuality and relationships in schools. Conversations with Scottish Government and Welsh Government to continue.

V. The Board noted that many schools were actively requesting this guidance and holding back on publication could have a detrimental impact on some pupils and the Commission's relationship with some stakeholders, most specifically Scottish Government. The Board were advised that the Secretary of State was strongly committed to making progress in this area, but felt that getting the timing right was crucial. It was agreed that discussion should take place with GEO on their views with regards to publishing the Commissions transgender guidance in Scotland only. **Action: Laura Lucking and Alastair Pringle**

VI. The Board agreed that publication of the guidance would be paused across all three nations until further conversations had taken place with key ministers.

VII. The Board requested that the guidance was re-circulated to Commissioners. **Action: Laura Lucking**

c) Hostile environment polices:

I. Alasdair MacDonald spoke to paper EHRC 88.13 annex D, which asked for the Board's views on whether the Commission should look further into the disproportionate and possibly discriminatory outcomes resulting from hostile environment policies through a coherent and ambitious package of work on race and immigration. This would consist of three elements:

1. **Use of enforcement powers** –To mitigate the most severe impacts in employment, housing, social security and other public services, it was felt that enforcement offered the best opportunity to make a difference on these issues. It was felt that it would be difficult to use the Public Sector Equality Duty (PSED) itself to challenge the hostile environment as racially discriminating against Black British people and as such, and although there are still limitations, it was proposed that a Section 16

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inquiry or Section 31 PSED assessment, alongside strategic litigation, was deployed.

The Board discussed the risks and impact of these powers, and were that advised counsel had been asked to consider these options. The Board agreed that this is a large area of work and we need to be clear on impact.

2. **Convening stakeholders –**To bring a range of stakeholders together to refine and promote three sets of clear policy recommendations: develop a centralised race equality strategy; promote our concerns on the international stage through the CERD and strengthening the PSED.

3. **Thought leadership** - Leading the national debate on racial inequality in modern Britain through continued call outs concerning incidents in the public sphere; through advising that this recent regression in norms for acceptable language and behaviour is the 'tip of the iceberg' where we would develop a nuanced narrative to explain and challenge racial prejudice more broadly and highlight where there has been progress.

The Board agreed with items 2 and 3 above, but more work was felt to be required on item 1 in terms of scoping out whether a section 31 PSED assessment or an inquiry was the better approach, specifically in the context of the upcoming publication of the Williams review. Officers were asked to conduct an analysis of the merits of using either the Commission's Section 16 or Section 31 powers, including resource implications and bring this to the Board for decision in May. **Action: Alasdair MacDonald**

8.2 NHRI Accreditation:

8.2.1 The Board were asked to note the proposed outline of paper NHRI Accreditation (EHRC 88.14) and its statement of compliance in Annex A; and provide feedback ahead of finalisation of the full Statement of compliance and submission in June 2020.

8.2.2 The Board raised that (point 9 EHRC 88.14 annex A) the term of office of the Wales Commissioner ended on 31 May 2019 and that this critical position continued to remain vacant. The Chair advised that he had raised this with Elizabeth Truss (Minister of Women and Equalities) in the context of the forthcoming reaccreditation process and Tailored Review. He noted that he would continue to discuss with the GEO.

9 Any other business

9.1 With no other business being raised, David Isaac thanked Board members and staff for their contributions, and drew the formal meeting to a close. He thanked Laura Lucking for her invaluable work at the Commission as she moves into a new external role.

9.2 The Board would next meet on 14 May 2020

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